Backgrounder

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Center for Immigration Studies

# The USA PATRIOT Act of 2001

## A Summary of the Anti-Terrorism Law's Immigration-Related Provisions

By Rosemary Jenks

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), signed into law on October 26, represents the U.S. government's primary legislative response to the terrorist attacks of September 11. Patterned after a proposal developed by the Department of Justice, this new law (Public Law No. 107-56) focuses mainly on reinforcing the arsenal of tools available to the Central Intelligence Agency, the Federal Bureau of Investigation, and federal prosecutors for identifying and disabling terrorist networks operating both within and outside the United States.

Despite the fact that U.S. immigration policy clearly is responsible for allowing foreign terrorists to enter the United States and conduct terrorist activities, the USA PATRIOT Act treats immigration policy almost as an afterthought. The immigration provisions included in this law reflect two persistent – and increasingly problematic – perceptions shared by many of our elected representatives and Justice Department officials: first, that the Immigration and Naturalization Service's primary function is the admission of aliens into the United States, rather than the enforcement of the laws regulating such admissions; and second, that immigration policy is a political quagmire better left untouched.

The first of these perceptions is reflected by the USA PATRIOT Act's failure to recognize that enforcement of existing immigration laws is just as important in the war on terrorism as better foreign intelligence and more diligent prosecution of those with terrorist ties, and its failure to hold the INS accountable for such enforcement. The second perception is reflected throughout the immigration-related portions of the Act: Rather than requiring immediate action by the INS and the State Department, many provisions simply require studies of potential future actions. Instead of demanding that INS immediately implement certain programs enacted by Congress in 1996, the law requires progress reports.

Undoubtedly, the USA PATRIOT Act contains a number of immigration provisions that will improve our ability to identify and either exclude or prosecute aliens with terrorist ties. It is equally clear, however, that this new law represents only a first step in the immigration-policy reforms that are necessary to combat terrorism effectively and to protect Americans from future terrorist attacks. A detailed summary of the law's immigration-related provisions follows. The complete text of the law is available on line at http://thomas.loc.gov/cgi-bin/bdquery/z?d107:HR03162:|TOM:/bss/d107query.html|

## Title I – Domestic Security

Section 102 expresses the Sense of Congress condemning discrimination against Arab and Muslim Americans.

## Title II – Surveillance

Section 203 grants authority for grand jury and electronic, wire and oral interception information to be shared with immigration officials when a matter of foreign intelligence or counterintelligence is involved.

## Title III – Money Laundering

Section 326 requires the Secretary of the Treasury to establish a system by which banks can verify the identity of account holders and match their names against a list of known terrorists and terrorist organizations to prevent money laundering.

## Title IV – Protecting the Border

### Subtitle A – Protecting the Northern Border

Section 402 authorizes a tripling of the number of Border Patrol personnel, Customs personnel, and immigration inspectors along the Northern Border and an additional $50 million each for Customs and INS to improve monitoring technology along the Northern Border.

Section 403 grants INS and State Department personnel access to the FBI's NCIC-III and the Wanted Persons File for the purpose of checking the criminal

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history of a visa applicant. INS and State would have access only to extracts from the actual databases, and would have to submit the visa applicant's fingerprints in order to get the full criminal history. This section also instructs the Attorney General and the Secretary of State to develop and certify within two years of enactment a technology standard that can be used to verify the identity of visa applicants and that can be used as the basis of an integrated system that will verify identity at ports of entry and share information with other law enforcement agencies.

Section 404 removes the existing restrictions on overtime pay for INS personnel.

Section 405 requires the Attorney General to report to Congress on the feasibility of expanding the FBI's Integrated Automated Fingerprint Identification System (IAFIS) to include visa applicants and visa holders wanted in connection with a criminal investigation, so they may be denied a visa or identified upon entry into or exit from the United States.

### Subtitle B – Enhanced Immigration Provisions

Section 411 broadens the grounds for excluding terrorists and aliens with ties to terrorist organizations. It authorizes the exclusion of the spouses and children of aliens who have committed acts linking them to terrorist organizations within the past five years and makes inadmissible any alien determined by the Attorney General and the Secretary of State to have been associated with a terrorist organization and who intends to commit terrorists acts in while in the United States. (Such aliens already are excludable under current law, since they are entering with the intent to engage in "unlawful activity.")

Section 412 directs the Attorney General to detain any alien certified to be engaged in terrorist activities. It authorizes the Attorney General to certify any alien as a terrorist where there are reasonable grounds to believe that he is affiliated with a designated terrorist organization or engaged in terrorist activities. It requires the Attorney General to place such aliens in removal proceedings, charge them with a criminal offense or release them within seven days of taking them into custody. It authorizes the Attorney General to detain certified terrorists for additional periods of up to six months if their removal is unlikely in the near future and if the alien's release will threaten national security or public safety. It limits judicial review of such detention to habeus corpus proceedings. Finally, it requires the Attorney General to report to Congress every six months on the number of certified aliens, the grounds for certification, their nationalities, the length of their detention, and the disposition of their cases.

Section 413 authorizes the Secretary of State to share information in State's visa-lookout database and, under certain circumstances, information on individual aliens with foreign governments in order to combat terrorism and trafficking in controlled substances, persons, or weapons.

Section 414 expresses the Sense of Congress regarding the need to expedite implementation of the integrated entry and exit data system enacted in Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) of 1996. It requests that the Attorney General fully implement this system at airports, seaports, and land border ports "with all deliberate speed and as expeditiously as practicable." It directs the Attorney General to focus on the use of biometric technology and the development of tamper-resistant, machine-readable documents during the development stage of the entry and exit system. It requires that the resulting system be interfaced with law enforcement databases used by federal agencies to identify and detain individuals who pose a threat to U.S. security. Finally, it requires the Office of Homeland Security to report to Congress within 12 months on "the information that is needed from any United States agency to effectively screen visa applicants and applicants for admission to the United States to identify" terrorists and other dangerous aliens.

Section 415 directs the Office of Homeland Security to participate in the development of the entry and exit system.

Section 416 directs the Attorney General to implement fully and to expand the foreign student tracking system enacted in the 1996 IIRAIRA. It requires the student database to include information on the date and port of entry and it authorizes the Attorney General to permit flight schools, language training schools, and vocational schools to participate in the expanded program.

Section 417 requires the Secretary of State annually to audit the implementation of the requirement that visa waiver countries issue machine-readable passports to their citizens. It advances the deadline by which countries must issue machine-readable passports in order to participate in the visa waiver program from 2007 to 2003, and it authorizes the Secretary of State to waive this requirement for countries that are "making progress toward" issuing machine-readable passports and have "taken appropriate measures to protect against misuse of current passports.

Section 418 directs the Secretary of State to determine whether consular shopping – the practice of traveling to a third country to apply for a visa to the United States, in order to avoid tighter security practices in the Consulate in one's home country – is a problem and to address it if it is.

### Subtitle C – Preservation of Immigration Benefits for Victims of Terrorism

Section 421 authorizes the Attorney General to grant special immigrant status (a category of legal permanent residence)



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to any alien for whom a petition for family- or employment-based legal permanent residence was filed and revoked because the petitioner, applicant, or alien beneficiary was killed or lost his or her job as a result of terrorist activities. It also authorizes special immigrant status for any alien who is the grandparent of a child, both of whose parents died as a result of terrorist activity, if either parent was a citizen, national, or lawful permanent resident of the United States on September 10, 2001.

Section 422 automatically extends by up to one year the authorized period of stay for nonimmigrants who were disabled by the terrorist attacks, along with their spouses and children. It extends the authorized period of stay for nonimmigrants who were prevented from entering the United States because of the terrorist attacks and permits FY 2001 diversity lottery winners who were prevented from entering the United States by the terrorist attacks to enter during the first six months of FY 2002, but to be counted against the quotas for FY 2001. It also grants legal permanent residence to the spouse and children of any FY 2001 diversity lottery winner who died as a result of the terrorist attacks. Finally, it extends the grant of parole for any parolee who was out of the country and unable to return before his or her parole expired on or after September 11, 2001, and it extends for 30 days any period for voluntary departure that expired between September 11 and October 11, 2001.

Section 423 permits aliens who entered the country as the spouses or minor children of U.S. citizens to retain immediate relative status, even though the citizen-sponsor died as a result of the terrorist attacks. It permits the spouses, children, and unmarried adult sons and daughters of lawful permanent residents, for whom immigration petitions have been filed, to retain their status as valid petitioners, even though the resident-alien petitioner died as a result of the terrorist attacks. It permits those spouses, children, and unmarried adult sons and daughters of lawful permanent residents for whom no petition was filed to file a petition on their own behalf for lawful permanent residence. It allows any alien who is the spouse or child of an alien killed in the terrorist attacks and who had applied for adjustment of status to lawful permanent residence to have the application adjudicated as if the death had not occurred. Finally, it waives the public charge grounds for inadmissibility for all aliens granted benefits under this section.

Section 424 authorizes any alien whose 21st birthday occurred in September 2001 to be considered a minor child for an additional 90 days for purposes of adjudicating a petition or application for immigration benefits, and any alien whose 21st birthday occurs after September 2001 to be considered a minor child for an additional 45 days for purposes of adjudicating a petition or application for immigration benefits.

Section 425 authorizes the Attorney General to provide "temporary administrative relief" to any alien who was here legally on September 10, is the relative of an individual who died or was disabled by the terrorist attacks, and is not otherwise entitled to relief under this subtitle.

Section 426 requires the Attorney General to establish standards of evidence for proving that any death, disability, or loss of employment due to physical damage to a business is the result of the terrorist attacks, for purposes of applying for the benefits under this subtitle.

Section 427 prohibits any benefits under this subtitle from being granted to terrorists or their family members.

## Title V – Investigating Terrorism

Section 504 authorizes federal foreign intelligence officers who conduct surveillance and physical searches to consult with federal law enforcement officers to coordinate efforts to investigate or protect against foreign attack, sabotage, terrorism, or clandestine intelligence activities by foreign powers.

Section 507 authorizes the Attorney General to seek an *ex parte* court order requiring an educational institution to turn over education records that are relevant to an investigation or prosecution of terrorism.

## Title X – Miscellaneous

Section 1002 expresses the Sense of Congress condemning violence against Sikh-Americans.

Section 1006 makes inadmissible to the United States any alien believed to be engaged, or seeking to engage, in money laundering. (Such aliens already are excludable under current law since they are entering to engage in "unlawful activity.") It also requires the Secretary of State to develop a money laundering watchlist to identify individuals who are known or suspected money launderers.

Section 1008 directs the Attorney General to conduct a study on the feasibility of using a biometric identifier scanning system, with access to the FBI's Integrated Automatic Fingerprint Identification System (IAFIS), at consular offices abroad and at ports of entry into the United States to identify aliens wanted in connection with criminal or terrorist investigations and to report his findings to Congress within 90 days.

Section 1009 directs the FBI to study and report to Congress on the feasibility of giving airlines direct access to the names of individuals suspected of terrorist activities.

Section 1012 prohibits any state from issuing a license to any individual to operate a vehicle transporting hazardous materials unless the Secretary of Transportation has first determined that the individual does not pose a security risk.



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